IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

MISC. CIVIL APPLICATION 101/99

ADAM ITALAZYO ISSA.....APPLICANT

VERSUS

SERVICES COMPUTER INDUSTRIES LTD..RESPONDENT

R U L I N G:

MANENTO, J:

This is a chamber summons filed by one Adamu Italazyo Issa under Section 40 A (4) (5) and 41 of the Security of Employment Act, Cap.574 as amended by Act No. 1/1975, Order XXI of the Civil Procedure Code, 1966 for the following orders:

(a) That this court may enforce the decision made on 27.3.1999 by the Minister for Labour as a decree of this court to have the applicant be reinstated in his former employment with the respondent with full wages and fringe benefits from 1st August, 1996 to the date the decree is fully satisfied.

(b) In the event the respondent fails or refuses to comply with the order of Specific performance, the court may be pleased to order that the respondent pay severance allowance, three months salary in lieu of notice, Statutory compensation, twelve month's salary and damages to the applicant.

(c) Interest at 31% per annum effective 1st September, 1996.

(d) Any other relief that the court may deem fit to grant.

This Chamber Summons is supported by an affidavit of the applicant, who deponed in his 1st paragraph of the affidavit that he had been in the service of the respondent since 7/4/1986 to 31/7/96 when his services were terminated. He is an engineer by profession. That he was dissatisfied with the termination so he reffered the dispute to the concilliation Board under the provisions of the Security of Employment Act, Cap 574 and the said concilliation Board after hearing the reference, the Board ordered that he should be reinstated. On a further reference to the Minister, the Minister confirmed the reinstatement order of the concilliation Board. However, the respondent did not comply with irrespect of the notification made to him. Hence the applicant filed this chamber summons for the execution of the Ministers decision.

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The respondent reacted by filing a counter affidavit insisting that he is not ready to reinstate the applicant and if need be, he would opt. for paying him his statutory allowance and one years salary as per section 40A(4)(5) of the Security of Employment Act, 1966 as amended by Act No. 1/1975. However, the learned counsel for the respondent, Mr. Mkongwa filed a notice for preliminary objection on point of law, which after the written submissions filed, I am delivering the ruling.

The point of preliminary objection raised on a point of law is that:-

> "That the reinstatement order made by the Minister is unlawful and therefore incapable of execution."

Mr. Mkongwa, learned counsel submitted that the Minister's decision was a confirmation of the order of the Conciliation Board to reinstate the respondent/applicant and that both decisions were made under the provisions of the Security of Employment Act, 1966 Section 40A as amended by Act No. 1 of 1975, Labour Laws (Miscellanious Amendment. Section 40A is the enabling section of the law for the Concilliation Board or the Minister to order re-instatement or re engagement. Conditions are set in Section 40A(I)(a) to (f) Subsection (d) is the relevant point in the issue before this court. The law provides that when a termination or dismissal has been refered to Board, the Board may, if is satisfied -

> (d) That the employee has not accepted any statutory compesetion to which [illegible] he may be entitled under this Act, -
> Order the employer to reinstate or re-engage the employee."
> Thus an employee who is entitled/to reinstatement is the one who has not accepted any statutory compensation to which he may be entitled to under the security of Employment Act, 1996 and the statutory compensation is defined by section 35 of the Security of Employment Act, 1996 as being an amount equal to severance allowance due to the employee on his termination.
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> The learned counsel further submitted that on termination, of his employment on 30/7/1966 the applicant was paid and received:

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(I) Three months salary in lieu of notice shs.474,375/-
(2) Severance allowance shs. 979,110/-
(3) Transportation of one and a half tons of personal effects shs. 500,000/-
(4) Transport for self and family - shs. 75,000/-
(5) Accumulated leave shs. 298,182/-
(6) Return fare shs. 150,00/-.

The total amount of payment was shs. 2,020,360/-.

The learned counsel for the respondent further submitted that the Concilliation Board and the Minister's powers of Ordering the re-instatement of the applicant had been abrogated by the applicant's decision to receive the statutory compensation from the respondent and they were to refuse to order the re-instatement of the applicant.

On the other hand, the applicant replied in his submissions that it is true that he was paid and received severance allowance to the tune of shs. 979,110/- together with other payments as stated by the counsel for the respondent and quoted above. However, he submitted that severance allowance and statutory compensation are two different things, governed by two different legistations. That is very true, as the severance allowance is governed by Severance Allowance Act, 1962 Cap. 487 while Statutory Compensation is governed by the Security of Employment Act, 1966, Cap.574 of the Laws. The applicant further and strongly submitted that the respondent is still liable to pay him his statutory compensation (ie equal to severance allowance) and twelve months wages, which one equal to shs. 1,248,000/- and 1,920,000/- respectively.

There is only one important issue on the question of the preliminary objection raised. The issue is whether the applicant was paid statutory compensation stated under section 40A(I)(d) so the both the concilliation Board and the Minister are precluded from determining the issue of wrongful termination or not. Both parties agree that the applicant was paid severance allowance, which Mr. Mkongwa submitted that it amounts to statutory compensation under the Security of Employment Act, 1966 while the applicant is contending that severance allowance is different from statutory compensation, only that they all have the same formular in calculating those allowance and compensation.

It is true that there are two legislations govering payments of Severance allowance and statutory compensation. It is not only the different legislations, but even the circumstances under which such payments are made are different. The two means different from each other and there is no mistake in calling one severance allowance and the other statutory compensation. The money paid to the applicant was Severance allowance and if it was ment to be statutory compensation under the Security of Employment Act, 1966 that is something hidden in the minds of the respondent which

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cannot be said to day that severance allowance means the same thing with statutory compensation. Having said so, I an of the opinion that both the Concilliation Board and the Minister were right in adjudicating on the matter before them as the applicant was not paid statutory compensation, under the Security of Employment Act, 1966 which they were dealing with but that the applicant was paid severance allowance under severance Allowance Act, 1962 Cap. 487 of the Laws.

Having ruled so, I now move to the rights of each party. Under the Security of Employment Act, 1966 as amended by Act No. 1/1975 Section 40A(5), (b) some 14 days have ellapsed from the date when the Minister confirmed the Order of the Concilliation Board for the re-instatement of the applicant. The respondent have not complied with the order of the Minister, which act amounts to refusal to re-instate the applicant into his former employment. The employer, respondent is therefore duty bound to pay the applicant statutory compensation under section 35 of the Security of Employment Act, 1966 and twelve months wages at a rate of wages to which the employee was entitled immediately before the termination of his employment. I really dont know the basis under which the applicant was paid severance allowance, but I believe the employer know why he paid the applicant severance allowance instead of statutory compensation. Save as to what I have said, the preliminary objection is dismissed and the main application is granted to the extent stated above.

All other claims by the applicant that he deserves damages, interests have no legal basis in the execution of the Ministers decision. The application is therefore granted with costs to the extent stated above.

A. R. MANENTO, J
3/12/99

3/12/99
Coram - Manento, J
Present in person - For the Applicant
Mr. Mkongwa - For the Respondent
CC. Manumbu Mrs

Court:- The ruling is read in the presence of the parties.

A. R. MANENTO, J
3/12/99